

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THREE BROTHERS TRADING, LLC,

Plaintiff,

-v.-

GENEREX BIOTECHNOLOGY CORP.,

Defendant.

18 Civ. 11585 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of the parties' letters regarding whether the Arbitrator may consider the issue of attorneys' fees in the upcoming arbitration hearing that is scheduled to begin on September 9, 2020. (Dkt. #82, 83). Notwithstanding of the scope of the remand in the Court's April 24, 2020 Opinion and Order (Dkt. #67), the Arbitrator continues to exercise the authority granted to him or her under the arbitration rules agreed upon and selected by the parties — here, the rules of the American Arbitration Association ("AAA") (*see* Dkt. #20, Ex. A at 4); *see also Local 1199, Hosp. & Health Care Emps. Union v. Brooks Drug Co.*, 956 F.2d 22, 25 (2d Cir.1992) ("The scope of authority of arbitrators generally depends on the intention of the parties to an arbitration, and is determined by the agreement or submission." (internal citations and quotation marks omitted)). Therefore, the scope of the Court's remand order does not alter the Arbitrator's authority to award attorneys' fees pursuant to AAA Commercial Rules 47(b) and 47(d)(ii). Furthermore, as Plaintiff correctly notes, the Court has already rejected Defendant's "prevailing party" argument. (Dkt. #67 at 31). As expressly

addressed in the April 24, 2020 Opinion and Order, and equally true with this subsequent remand, “the case was remanded then, and is remanded now, only to determine the extent of damages to which AEXG is entitled as the prevailing party.” (*Id.*).

SO ORDERED.

Dated: August 7, 2020
New York, New York



KATHERINE POLK FAILLA
United States District Judge